Supreme Court, U.S.
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No. 94-1005

IN THE

Supreme Court of the United States

October Term, 1994

JOSEPH E. HARHAI, *PRO SE*,

Petitioner,

vs.

THE HONORABLE GARY P. CARUSO, THE HONORABLE JOHN E. BLAHOVEC, THE HONORABLE CHARLES MARKER, THE HONORABLE GILFERT M. MIHALICH, Court of Common Pleas of Westmoreland County, Pennsylvania, THE HONORABLE JOSEPH A. HUDOCK, Superior Court Sitting in Pittsburgh, Pennsylvania, WILLIAM J. WIKER, Esquire, HENRY A. HUDSON, JR., Esquire, GARY A. FALATOVICH, Esquire, Attorney at Law, JANE E. KAYLOR-HART, an individual, RONALD BAUGHMAN, an individual, TONY GIUNTA, an individual, JOSEPH SHONDELMYER, an individual, WESTMORELAND COUNTY CHILDREN'S BUREAU, WESTMORELAND MENTAL HEALTH CENTER, THOMAS J. GODLEWSKI, Esquire,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JAMES F. ISRAEL, ESQUIRE
Counsel of Record
ISRAEL & WOOD, P.C.
Suite 501, Grant Building
Pittsburgh, Pennsylvania 15219
Telephone: (412) 391-1114
Attorneys for Respondents
Joseph Shondelmyer, an Individual, Westmoreland County Children's Bureau and Westmoreland Mental Health Center

BATAVIA TIMES PRINTING, INC.—Telephone (716) 344-2000

COUNTERSTATEMENT OF THE QUESTION PRESENTED

Whether the lower Courts' dismissal of the Plaintiff-Petitioner's Second Amended Complaint alleging civil rights violations putatively arising out of Petitioner's State Court custody litigation was appropriate?

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COUNTERSTATEMENT OF THE CASE

A. Procedural History

Petitioner commenced the present civil action on March 17, 1992. Petitioner thereafter sought to amend his Complaint and, on August 10, 1992, the United States District Court for the Western District of Pennsylvania granted Petitioner leave to amend his Complaint. Petitioner then filed an Amended Complaint. Thereafter, each of the Respondents moved to dismiss Petitioner's Amended Complaint. On April 7, 1993, the District Court entered an Order dismissing Petitioner's Amended Complaint. As to Respondents Joseph Shondelmyer, Westmoreland County Children's Bureau, and Westmoreland Mental Health Center, the dismissal was without prejudice and leave was granted to file a Second Amended Complaint. On January 28, 1994, Petitioner filed a Second Amended Complaint. The Respondents again filed Motions to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6). On February 4, 1994, the District Court entered an Order dismissing Petitioner's Second Amended Complaint. On February 28, 1994, Petitioner filed an appeal to the United States Circuit Court of Appeals for the Third Circuit and, on September 7, 1994, the Third Circuit affirmed the lower Court's dismissal of Plaintiff's Second Amended Complaint. Petitioner now asks this Court to grant *certiorari* in this matter.

B. Counter Statement of Facts

The present litigation arises out of allegations that the Respondents have denied Petitioner his constitutionally guaranteed rights during the course of custody litigation which was undertaken in the

Court of Common Pleas for Westmoreland County, Pennsylvania. As to the Respondents Joseph Shondelmyer, Westmoreland County Children's Bureau, and Westmoreland Mental Health Center, Petitioner's Second Amended Complaint, at issue in the present appeal, makes the following allegations:

COUNT TWELVE

Joseph E. Harhai vs. Joseph Shondelmyer for Abuse of Civil Process, Perjury, Fraud, and Deceit and for Deprivation of Plaintiff's Civil Rights under 42 U.S.C. §§1983 and 1988

54. On May 28, 1991, Defendant, Joseph Shondelmyer, who was then an employee of the Westmoreland County Court of Common Pleas of Judge John E. Blahovec, acting in his capacity as an official Court Reporter, intentionally created a fictitious record and transcript of a significant and important part of the testimony of the Plaintiff by falsifying and distorting testimony of a custody/motions hearing before the Court, for the express purpose of portraying the Plaintiff as mentally incompetent, disturbed, and incoherent. Racketeer Defendant Joseph Shondelmyer intentionally and maliciously changed and distorted the official transcript of the hearing, leaving out certain testimony and adding other testimony for the purpose of denying the Plaintiff due process of law and a fair hearing, and to deny the Plaintiff his right to appellate review of the Court's decision.

This Defendant acting under color of state law, deprived the Plaintiff of rights, privileges, and immunities secured and guaranteed by the Constitution and federal laws of the United States of America, arising out of a conspiracy

between the above named and the other thirteen (13) named Defendants to deprive the Plaintiff of such rights, and the above named reached an agreement and/or understanding with one or another of the named state official or officials or Defendant actor or actors, and/or this Defendant, a private party or entity, planned and/or conspired together to deprive the Plaintiff of a federal right, as more particularly and specifically described as follows:

Defendant Joseph Shondelmyer conspired and agreed with Judge John E. Blahovec, one of the Defendants herein, and who was and is a state official, and with Henry A. Hudson, Jr., Esquire, and Jane E. Kaylor Hart, private party Defendants herein, to create a false and perjured record of testimony of a Motions hearing intended to portray the Plaintiff as a person who should not retain custody of his child, and which served to further deny Plaintiff his lawful custodial and visitation rights.

COUNT THIRTEEN

Joseph E. Harhai vs. Westmoreland County Children's Bureau for Abuse of Civil Process and for Deprivation of Plaintiff's Rights under 42 U.S.C. §§1983 and 1988

55. Defendant named herein, beginning on or about August 27, 1987, and thereafter, as part of a racketeering conspiracy of Westmoreland County did unlawfully, knowingly, and abusively interfere with the Plaintiff's lawful custodial rights with his son, depriving for a period of about nine months the Plaintiff's proper relationship with his son, and refusing to allow the Plaintiff to visit with his son without any

compelling or reasonable cause contrary to the Plaintiff's valid custody, as ordered by the Pennsylvania courts.

This Defendant, acting under color of state law, deprived the Plaintiff of rights, privileges, and immunities secured and guaranteed by the Constitution and federal laws of the United States of America, arising out of a conspiracy between the above named and the other thirteen (13) named Defendants to deprive the Plaintiff of such rights, and the above reached an agreement and/or understanding with one or another of the named state official or officials or Defendant actor or actors, and/or this Defendant, a private party or entity, planned and/or conspired together to deprive the Plaintiff of a federal rights, as more particularly and specifically described as follows:

Defendant Westmoreland County Children's Bureau, a state organization acting by and through its officers and employees, and in cooperation and agreement with Judge John E. Blahovec and other private Defendants herein, conspired to deprive the Plaintiff of his lawful custodial and visitation rights.

COUNT FOURTEEN

Joseph E. Harhai vs. Westmoreland Mental Health Center for Abuse of Civil Process and for Deprivation of Plaintiff's Civil Rights under 42 U.S.C. §§1983 and 1988

56. Defendant named herein, beginning on or about August 27, 1987, and thereafter, as part of a Westmoreland County racketeering scheme, in unlawful conspiracy with the Westmoreland County Court, did fraudulently, without

compelling reason or good cause, abusively interfere with the Plaintiff's lawful custodial rights, and did for compensatory purposes interfere with a normal father/son family relationship, and did for the purpose of profiteering interfere contrary to the Plaintiff's valid custody as had been ordered by the Pennsylvania courts, all without good cause or reason.

This Defendant, acting under color of state law, deprived the Plaintiff of rights, privileges, and immunities secured and guaranteed by the Constitution and federal laws of the United States of America, arising out of a conspiracy between the above named and the other thirteen (13) named Defendants to deprive the Plaintiff of such rights, and the above named reached an agreement and/or understanding with one or another of the named state official or officials or Defendant actor or actors, and/or this Defendant, a private party or entity, planned and/or conspired together to deprive the Plaintiff of a federal right, as more particularly and specifically described as follows:

Defendant Westmoreland Mental Health Center conspired and agreed with Judge John E. Blahovec and Westmoreland County Children's Bureau, two of the named Defendants herein and who are a state official and a state organization, respectively, and with Gary A. Falatovich, a private Defendant, to deny the Plaintiff his lawful custodial and/or visitation rights.

COUNT FIFTEEN

Joseph E. Harhai vs. All Named Defendants for Civil Conspiracy

57. All of the above-named Defendants, acting together and in concert with each other, from on or about November 3, 1977, and continuing until the date of the preparation of this complaint, about March 1, 1992, conspired together and with one another to deprive the Plaintiff of his constitutional rights to due process of law, and with the intent to harm the Plaintiff and to prohibit the Plaintiff from exercising his rights to a fair and impartial judicial system, and to deprive the Plaintiff of his property.

58. Due process violations include, but are not limited to the following rights, privileges and immunities secured by the Constitution of the United States:

A. Right to fair and uniform application of Pennsylvania Rules of Civil Procedure.

B. Right to a fair application of Pennsylvania Case Law relative to evidentiary proof.

C. Right not to be coerced to give up legal and civil rights.

D. Right not to be subject to abuse of process.

E. Right not to have a valid contract (consent agreement dated March 16, 1988) impaired.

F. Right not to be subject to Pendant State Torts.

G. Right not to be subjected to prohibited racketeering activities.

Pursuant to Fed.R.Civ.P. 12(b)(6), the District Court dismissed, with prejudice, the federal civil rights claims. The District Court dismissed, pursuant to Fed.R.Civ.P. 12(b)(1), without prejudice, the state law claims.

SUMMARY OF ARGUMENT

Petitioner has not articulated a sound basis upon which *certiorari* should be granted in this matter. Petitioner has not indicated that the Third Circuit Court of Appeals decision in this matter is in conflict with another United States Court of Appeals decision on the same matter, or with the precedent of this Court. Further, the Third Circuit Court of Appeals Decision did not conflict with a decision of the Pennsylvania Supreme Court. Additionally, the Third Circuit decision did not depart so far from the usual and accepted course of judicial proceedings such that this Court should exercise its supervisory capacity.

Moreover, the decision which the Third Circuit Court of Appeals rendered was correct. Petitioner's Second Amended Complaint, insofar as the allegations against the Respondents Joseph Shondelmyer, Westmoreland County Children's Bureau, and Westmoreland Mental Health Center is inadequate as to both form and substance, under the Federal Rules of pleading. Consequently, dismissal of Petitioner's Second Amended Complaint was appropriate.

ARGUMENT

A. PETITIONER HAS NOT ARTICULATED ANY SOUND BASIS UPON WHICH *CERTIORARI* SHOULD BE GRANTED IN THE PRESENT CASE.

Rule 10.1 of this Court articulates the bases which this Court will examine in determining whether or not to grant *certiorari* in a particular case. Rule 10.1, and the sub-parts thereunder, indicate that typically, there must be a circuit court decision in conflict with the decision of another circuit (in similar cases), conflict with the decision of a state court of last resort on a federal question, or a departure from the usual course of judicial proceedings such that this Court should exercise its supervisory powers. It is respectfully submitted that none of these circumstances are present in this case.

1. The substantive basis upon which Petitioner's Second Amended Complaint was dismissed conformed to the Jurisprudence of this Court.

a. Abstention.

The Respondents Shondelmyer, Westmoreland County Children's Bureau, and Westmoreland Mental Health Center submit that the District Court's dismissal of Petitioner's Second Amended Complaint was appropriate under the *Feldman-Rooker* Doctrine and pursuant to *Younger v. Harris,* 401 U.S. 37 (1971). Petitioner's claims impinge on significant state interests which may be harmed by the intrusion of the federal court into state court matters. Moreover, it is well established that abstention is appropriate in the context of domestic relations' matters, as State

Courts have strong interest and great competence in adjudicating such matters, which require continuing judicial supervision. *In Re: Burrus*, 136 U.S. 586 (1990); *Moore v. Sims*, 442 U.S. 415 (1979); *Solomon v. Solomon*, 516 F.2d 1018 (2d Cir. 1967). Additionally, a United States District Court has no authority to review final judgments of a State Court in judicial proceedings. This is the *Feldman-Rooker* Doctrine. *District of Columbia v. Feldman*, 460 U.S. 462, 582 (1983); *Rooker v. Fidelity Trust Company*, 263 U.S. 413 (1923). In short, the substantive basis upon which Petitioner's Second Amended Complaint was dismissed conformed to the established precedents of this Court, and need not be reviewed.

b. The Second Amended Complaint fails to state a Cause of Action Upon which relief may be granted for putative violations of 42 U.S.C. 1985 and 1986.

Petitioner also purports to state causes of action against the Respondents Shondelmyer, Westmoreland County Children's Bureau and Westmoreland Mental Health Center for violation of equal protection of the laws pursuant to Sections 1985 and 1986 of Title 42. Petitioner has not, however, alleged interference with federal offices, and therefore does not set forth any cause of action under Section 1985 (1). Petitioner has also failed to allege a racial or otherwise class based invidiously discriminatory animus behind the Respondent's actions, and therefore has not stated a claim pursuant to Section 1985 (2) or (3). *Griffin v. Breckinridge*, 403 U.S. 88, 102 (1971); *Brawer v. Horowitz*, 535 F.2d 830, 840 (3d Cir. 1976). Furthermore, inasmuch as a Section 1986 claim is derivative of the Section 1985 claim, the 1986 claim

must fail. *Rourke v. U.S.*, 744 F. Supp. 100 (E.D.Pa. 1988); *Silo v. City of Philadelphia*, 593 F. Supp. 870, 874 (E.D. Pa. 1984).

2. Petitioner's failure to conform the Second Amended Complaint to the well established pleading requirements pertinent to the causes of action Petitioner asserts, warranted dismissal of his Second Amended Complaint.

Federal Rule of Civil Procedure 8(a) requires that a pleader state in a short and plain manner the grounds upon which the pleader contends they are entitled to relief. In the context of a civil rights action, federal pleading practice has required that a civil rights plaintiff state with specificity the material facts upon which the plaintiff premises their right to relief. *Rose v. Bartle*, 891 F.2d 331, 353-354 (3d Cir. 1989); *Darr v. Wolfe*, 767 F.2d 79, 80 (3d Cir. 1988);

The specificity requirement is based upon "[t]he dual policy concerns of [1] protecting state officials from a deluge of frivolous claims and [2] providing state officials with sufficient notice of the claims asserted to enable preparation of responsive pleadings." *Colburn v. Upper Darby Twp.*, 838 F.2d 663, 666 (3d Cir. 1988), *cert. denied*, 103 L.Ed.2d 808, 109 S.Ct. 1338 (1989).

Insofar as Respondent Shondelmyer is concerned, the allegations which Petitioner makes concerning Shondelmyer's putative deprivation of the Petitioner's civil rights, are conclusory and non-specific. Petitioner alleges that Respondent Shondelmyer ". . . intentionally created a fictitious record and transcript of a significant and important part of the testimony of the plaintiff by falsifying and

distorting testimony of a custody/motions hearing before the Court, for the express purpose of portraying Plaintiff as mentally incompetent, disturbed, and incoherent." Petitioner goes on to allege that Respondent Shondelmyer "intentionally and maliciously" changed and distorted the official transcript of the hearing. Petitioner does not, however, identify with any degree of specificity, those portions of the transcript which were changed, or distorted.

Furthermore, Petitioner has failed to identify material facts relating to Shondelmyer, or Westmoreland County Children's Bureau, sufficient to support a cause of action for violation of civil rights. Additionally, to the extent that the Court may deem, for the purposes of analyzing Petitioner's pleadings, Westomoreland Mental Health Center to be a state actor within the meaning of 42 U.S.C. Section 1983, Petitioner has again failed to set forth material facts, with any degree of specificity, sufficient to support a cause of action against Westmoreland Mental Health Center. Consequently, the District Court and the Third Circuit, appropriately dismissed Petitioner's Second Amended Complaint.

a. Petitioner's conspiracy allegations are insufficient as a matter of law.

Petitioner also alleges that the Respondents Shondelmyer, Westmoreland County Children's Bureau, and Westmoreland Mental Health Center conspired with the other Respondents in this matter to deprive Petitioner of his civil rights. Petitioner does not, however, articulate with any specificity the material facts upon which the conspircy allegation is

premised. Similarly, Petitioner asserts a conspiracy on the part of the Respondents Westmoreland County Children's Bureau and Westmoreland Mental Health Center to deprive Petitioner of his civil rights. However, Petitioner does not plead any material facts upon which the conspiracy may be premised. In view of the foregoing, the District Court, and the Third Circuit, correctly found that Petitioner's Second Amended Complaint was insufficient, as a matter of law, to state a claim upon which relief could be granted. *Duvall v. Sharp,* 905 F.2d 1188, 1189 (8th Cir. 1990); *Chicarelli v. Plymouth Gardner Apartment,* 551 F. Supp. 532, 539 (E.D. Pa. 1982).

b. Petitioner's Second Amended Complaint, as to the allegations of racketeer influenced corrupt organization activity are legally insufficient.

Other than the bald allegation that the Westmoreland County Court System "routinely engages in a pattern of racketeering activities . . ." Petitioner has not articulated any factual basis for relief pursuant to the Racketeer Influenced Corrupt Organization Act, 18 U.S.C. §1961 *et seq.* In order to state a claim upon which relief may be granted, the Petitioner must allege five elements. The elements are (1) the conduct of (2) an enterprise (3) through a pattern (4) of racketeering activity, resulting in (5) injury to the plaintiff's business or property. *Keystone Insurance Company v. Houghton,* 473 U.S. 479, 495 (1985). A "pattern" requires at least two acts and "racketeering activity" means any one of those predicate offenses listed in 18 U.S.C. §1961(a)(1).

In the present case, Petitioner alleges no specific acts which would allow one to conclude that the enforcement of Pennsylvania's child custody laws is within the scope of RICO. Indeed, in the case of *McMurtry v. Brasfield,* 654 F.Supp. 1222 (E.D. Va. 1987), for example, the scope of RICO was held not to encompass domestic relations disputes. The United States District Court for the Eastern District of Virginia dismissed the Complaint in *McMurtry* on a Motion to Dismiss. Consequently the Third Circuit appropriately affirmed dismissal of Petitioner's Second Amended Complaint.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, it is respectfully submitted that this Court may appropriately deny Petitioner's Petition for a Writ of *Certiorari*.

Respectfully submitted,

JAMES F. ISRAEL, ESQUIRE
Counsel of Record
ISRAEL & WOOD, P.C.
Suite 501, Grant Building
Pittsburgh, Pennsylvania 15219
Telephone: (412) 391-1114
Attorneys for Respondents
Joseph Shondelmyer, an Individual, Westmoreland County Children's Bureau and Westmoreland Mental Health Center